

**Commonwealth Edison**  
**COMMENTS ON STAFF'S PROPOSED RULES**  
**September 25, 2009**

ComEd appreciates the opportunity to offer comments concerning the September 16, 2009 draft first notice rule ("DFNR") prepared by the Office of Retail Market Development ("ORMD") pursuant to the Illinois Commerce Commission's Order in Docket Nos. 08-0619/08-0620/08-0621 (Cons.) ("Order"). At this point in the development of the draft consumer education and protection rules, it would be premature to offer detailed comments and proposed revisions in redline format. Rather, ComEd proffers the following. As the DFNR is further refined based upon feedback from workshop participants, ComEd intends to produce more detailed comments on specific language within the various passages.

**Proper Administrative Code for New Rulemaking**

It is unclear that Illinois Administrative Code Part 410 ("Part 410") is the appropriate code part in which to memorialize the DFNR. While it may seem appropriate to house such rules in Part 410 in light of its title (*Standards of Service for Electric Utilities and Alternative Retail Electric Suppliers*), the vast majority of the DFNR's focus is on Retail Electric Supplier ("RES") marketing practices, which warrants a separate new code part -- not an amendment to the existing code part related to electric utilities. Therefore, ComEd suggests that these proposed rules be promulgated under a new code part. Alternatively, ComEd seeks assurances from Staff and the workshop participants that only the sections indicated in the DFNR (e.g., Section 410.10 "Definitions" and new sections 410.500 through 410.810) are the sole subjects of the proceeding and amendments to other sections of Part 410 will not become the subject of the rulemaking.

**Questions Concerning Commission Legal Authority**

As reflected in the Commission's Order (at page 47), there may be some question concerning the Commission's authority to promulgate consumer protection rules such as those contained in the DFNR. Therefore, ComEd recommends that the workshop process be used to assess the participants' views on the bounds of the Commission's authority, where appropriate. The objective of this recommendation is to avoid unnecessary litigation at the Commission, which may delay implementation, and to prompt parties to address questions concerning Commission jurisdiction in the appropriate forum. Further, the Commission also indicated that certain matters may be appropriately implemented addressed through utility tariffs, while other items may be more appropriately addressed through a rule. ComEd suggests that any items that impact utility requirements within the DFNR should be reviewed to determine if they are better addressed through utility resource guides/handbooks or utility tariffs, thereby avoiding the overburdening of the this nascent rulemaking proceeding.

**Market Relationships**

The DFNR seems to conclude that ICC Staff is the appropriate contact for escalated complaints regarding RES services. ComEd agrees with that policy. However, ComEd continues to object to requiring utilities to offer a rescind service to customers that effectively seek to be released from their enrollment with a RES during a set grace period (Section 410.610). Further, the provision of Section 410.720 which requires RESs to “notify the utility of any informal complaint received” should be revised to detail the more formal and required business practices necessary in order to direct the utility to cancel changes on behalf of the RESs

**Enforcement**

While the intent of certain provisions is unclear, ComEd is concerned about the process laid out in Subpart I: Enforcement. Among other concerns, the process outlined seems overly complex and extremely burdensome to ICC Staff, RESs and even customers. Further, it is unclear to ComEd whether ICC Staff has the resources to fulfill such requirements or whether such a process will result in a self-imposed and potentially unfunded mandate. Additionally, it is unclear that there is a need for “emergency” or “expedited” treatment with respect to topics covered by the DFNR.

**Further Refinement of DFNR**

Instead of devoting time to the compilation of comments before the next workshop, ComEd recommends that ORMD use such time to further refine its DFNR and reflect the comments received, as it deems appropriate.

**DFNR Includes Items that are not a Part of the Workshop Consensus**

The Order (at page 48) indicates that the workshop participants, including electric utilities, must work in good faith in discussing the items to be included in the rulemaking and those that may be most appropriate for a utility’s tariffs. ComEd looks forward to this formal discussion of the specific items required by the Commission’s order as being potentially included in a draft rule. Indeed, the DFNR includes references an undefined “Do Not Market List” whereas the Commission specifically has concerns regarding the need of such a list (48:IV (E)(7)).